

WILEY, REIN & FIELDING

1776 K STREET, N.W.  
WASHINGTON, D. C. 20006  
(202) 429-7000

DOCKET FILE COPY ORIGINAL

NANCY J. VICTORY  
(202) 429-7388

August 6, 1997

FACSIMILE  
(202) 429-7049

EX PARTE OR LATE FILED

The Honorable Reed E. Hundt  
The Honorable James H. Quello  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

AUG - 6 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

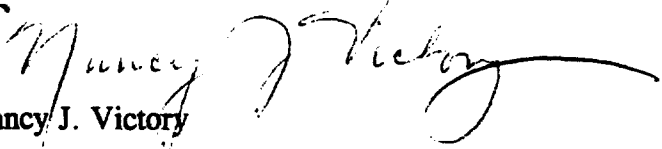
Re: MobileMedia Corporation *et al.* (WT Docket No. 97-115)

Dear Mr. Chairman and Commissioners:

Enclosed is a facsimile copy of the monthly status report of MobileMedia Corporation, filed pursuant to the Commission's stay order in the above-referenced proceeding. The original copy of the report will be filed with the Commission as soon as it is received from the Company.

Should any questions arise concerning this filing, please contact the undersigned counsel for MobileMedia Corporation.

Sincerely,

  
Nancy J. Victory

cc: service list on the attached document

No. of Copies rec'd 1  
List ABCDE

**MOBILEMEDIA CORPORATION**  
**65 Challenger Road**  
**Ridgefield Park, New Jersey 07660**  
**(201) 393-4664**  
**Fax: (201) 449-8969**

**August 6, 1997**

**The Honorable Reed E. Hundt**  
**The Honorable James H. Quello**  
**The Honorable Rachelle B. Chong**  
**The Honorable Susan Ness**  
**Federal Communications Commission**  
**1919 M Street, N.W.**  
**Washington, D.C. 20554**

**Re: MobileMedia Corporation et al. (WT Docket No. 97-115)**

**Dear Mr. Chairman and Commissioners:**

**Pursuant to Paragraph 19 of the Stay Order entered by the Commission on June 6, 1997, MobileMedia submits this monthly report as to the progress of the bankruptcy proceedings:**

**I. PROCEEDINGS IN THE BANKRUPTCY COURT**

**Activity in the Bankruptcy Court in July related to several motions that were previously filed with the Bankruptcy Court and described in MobileMedia's July 7 monthly status report. These motions were:**

- 1. Debtors' Motion for an Order Enjoining Certain Transfers of the Stock of MobileMedia Corporation (as described in the last monthly report)**
  - The Court granted the Debtor's Motion on July 11, 1997 and entered an Order enjoining transfers of the stock of MobileMedia by its current officers, directors and senior managers. A copy of this Motion and the Court's Order, which was promptly served on all affected parties, are attached hereto as Exhibit A.**

2. **Application for Order Authorizing Employment of The Blackstone Group L.P. as Financial Advisor by the Debtors**

- The Court approved the terms of Blackstone's engagement. A copy of the Application is attached hereto as Exhibit B.

3. **Debtors' Motion for a Preliminary Injunction Staying or Enjoining the Continuation of Certain Securities Litigation Pending in the United States District Court for the District of New Jersey**

- The hearing on this motion was adjourned until September 12, 1997 to afford the parties an opportunity to discuss a possible settlement of the litigation.

4. **Motion for an Order Authorizing the Debtors to Employ Mercer Management Consulting as Consultants**

- The Court approved the terms of Mercer's engagement.

In addition, the Debtors filed further motions with the Bankruptcy Court in July relating to leases of non-residential real property pursuant to which the Debtors lease certain office space and tower sites. Two orders relating to such motions were approved in July by the Bankruptcy Court.

## **II. PROGRESS TOWARDS A SALE OR STANDALONE PLAN OF REORGANIZATION**

Progress continued in July towards a preliminary plan of reorganization - both as to a potential sale of the Company to a third party and as to a potential "stand-alone" plan pursuant to which the Company would be acquired by its creditors.

In July, lengthy meetings were held between MobileMedia management, The Blackstone Group and representatives of prospective purchasers. These prospective purchasers (as well as others) have begun conducting "due diligence", which includes reviewing operational and financial data concerning the Company.<sup>1</sup> Further discussions and due diligence meetings are scheduled in the

---

<sup>1</sup> In order to assist these and other potential purchasers, the Company has assembled voluminous financial and operational data in a "data room" and has provided multiple parties with access to this information.

Chairman Reed E. Hundt  
August 6, 1997  
Page 3

coming weeks. In addition, the Debtors are seeking to solicit interest from a broader array of companies that might be interested in a transaction. After this process is completed, the Company will formally solicit bids to purchase the company.<sup>2</sup>

Because a third-party purchaser may not be found, on a parallel track the Company has continued discussions with its Lenders and Creditors Committee regarding the possibility of a "stand-alone" plan of reorganization. In addition, the Company continues to keep its creditors informed as to the Company's progress in its efforts to stabilize and improve its business operations.<sup>3</sup> To that end, a lengthy meeting was conducted at Company headquarters on July 9, 1997 at which representatives of the creditors and their financial advisors were given a detailed presentation on the Company's operations and current financial performance.

The Company is satisfied with its progress to date with these issues.

### **III. FINANCIAL PERFORMANCE**

As previously indicated, the Debtors are required to file Monthly Operating Reports with the United States Trustee. The Monthly Operating Report provides information relating to the Company's financial performance for the prior month. A copy of the Debtors' Monthly Operating Report for June, 1997, which was filed on July 31, 1997 is attached hereto as Exhibit C.

### **IV. OTHER DEVELOPMENTS**

The Debtors are continuing to evaluate the validity of the more than 2,000 filed pre-petition claims, with the goal of resolving as many claims as possible without litigation. Relative certainty as to the amount of the Debtor's pre-petition obligations is a necessary element to a plan of reorganization. As is typical, claims have been filed by all types of creditors, including, by way of

---

<sup>2</sup> Because The Blackstone Group and the Debtors believe it would be detrimental to the plan process to disclose the identities of the third-parties with whom the Debtors have met and the details of those discussions, the foregoing description is, by necessity, summary in nature. Moreover, these parties were required to execute strict confidentiality agreements prior to being given access to any non-public information relating to the Debtors.

<sup>3</sup> Stabilizing the business is necessary to increase value, and to determine the contours of the business plan and the Debtor's debt capacity in relation to either a sale or standalone plan.

**Chairman Reed E. Hundt**  
**August 6, 1997**  
**Page 4**

example, taxing authorities, vendors, landlords, and litigation claimants. Significant progress has already been made in this process, as the Debtors have analyzed and in many cases reached an agreed upon amount as to several hundred of the filed claims. The Debtors anticipate filing the first of numerous motions relating to claims resolution in the next few weeks.

We hope that this information is helpful. If we can provide any additional information or if you have any questions with regard to the foregoing, please let me know.

Sincerely,

  
**Joseph A. Bondi**  
**Chairman-Restructuring**

cc: **William E. Kennard, Esq.**  
**Daniel Phytroyon, Esq.**  
**David Solomon, Esq.**  
**Rosaline K. Allen, Esq.**  
**Gary Schoonman, Esq.**  
**John J. Riffer, Esq.**  
**Alan Nafatalin, Esq.**  
**John Harwood, Esq.**  
**Philip Spector, Esq.**  
**Dennis Corbett, Esq.**  
**Michael Hays, Esq.**  
**Louis Gurman, Esq.**  
**David E. Sellinger, Esq.**  
**W. Neil Eggleston, Esq.**  
**Carl Northrup, Esq.**  
**David Richards, Esq.**  
**Arthur Harding, Esq.**  
**James C. Mingee, Esq.**  
**Mr. William Caton (for inclusion with WT Docket No: 97-115)**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
MobileMedia Communications,	)	Case No. 97-174
Inc., et al.,	)	
	)	(Jointly Administered)
Debtors.	)	

**ORDER RESTRICTING CERTAIN TRADING IN  
THE STOCK OF MOBILEMEDIA CORPORATION**

WHEREAS, MobileMedia Corporation, a Delaware corporation ("MobileMedia"), MobileMedia Communications, Inc., a Delaware corporation ("Communications"), and the subsidiaries of Communications, each a debtor and debtor-in-possession herein (collectively, the "Debtors"), having filed their Motion for an Order Restricting Certain Trading in the Stock of MobileMedia Corporation (the "Motion"), the Declaration of Joseph A. Bondi in support thereof, and a Memorandum of Law in support thereof on June 23, 1997; and sufficient cause appearing therefor;

**The Court hereby finds and determines that:**

1. Due notice of, and an opportunity to object to, the Motion was provided to parties in interest.
2. In light of the order issued by the Federal Communications Commission on June 6, 1997 (the "June 6 Order") conditionally granting the Debtors a stay of certain pending

554

regulatory hearings, granting the relief requested in the Motion is in the best interests of the Debtors and their estates.

3. In light of the provisions of the June 6 Order, trading in the stock of MobileMedia by the current officers, directors, and senior managers (i.e., David A. Bayer, Clifford A. Bean, John L. Bunce, Mitchell R. Cohen, F. Warren Hellman, Joseph A. Bondi, Ronald R. Grawert, H. Andrew Cross, Steven Gross, H. Stephen Burdette, Santo J. Pittsman, Kevin T. Shea, Patricia A. Gray, Roberta Boykin, Debra P. Hilson, Curtis M. Hughes, Vito Panzella, James Pascucci, and Mark Witsaman (collectively, the Restricted Parties")) implicates property of the estate that section 362 of title 11 of the United States Code (the "Bankruptcy Code") is intended to protect.

4. In light of the provisions of the June 6 Order, the Debtors have also established that trading by the Restricted Parties in the stock of MobileMedia Corporation would pose a serious risk to the Debtors' reorganization process.

Based upon the foregoing, it is hereby ordered, adjudged and decreed that:

A. The Motion is granted, ~~in all respects~~

B. Pursuant to sections 362 and 105 of the Bankruptcy Code and until further order of this Court, the Restricted Parties are prohibited from selling or transferring any stock of MobileMedia; provided, however, that if (a) the name of a Restricted Party is removed from the list referred to in Paragraph 18 of the June 6 Order, or (b) a Restricted Party is no longer considered a potential wrongdoer by the FCC, then, upon being advised in writing by the Debtors (upon 10 days' prior notice to the Agent and the Committee) that a specific contemplated sale or



other transfer of MobileMedia stock would not prejudice the Debtors in light of the June 6 Order, such Restricted Party shall no longer be subject to the prohibition effected by this Order.

Dated: July 11 1997  
Wilmington, Delaware



The Honorable Peter J. Walsh  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
MobileMedia Communications,	)	Case No. 97-174 (poc)
Inc., <u>et al.</u> ,	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

**MOTION FOR AN ORDER ENJOINING CERTAIN TRANSFERS  
OF THE STOCK OF MOBILEMEDIA CORPORATION**

MobileMedia Corporation, a Delaware corporation ("MobileMedia"),  
MobileMedia Communications, Inc., a Delaware corporation ("Communications"), and the  
subsidiaries of Communications, each a debtor and debtor-in-possession herein (collectively, the  
"Debtors"), hereby move that this Court, pursuant to 11 U.S.C. § 362 and 11 U.S.C. § 105(a)  
prohibit the sale or transfer of the stock of MobileMedia Corporation by David A. Bayer,  
Clifford A. Bean, John L. Bunce, Mitchell R. Cohen, F. Warren Hellman, Joseph A. Bondi,  
Ronald R. Grawert, H. Andrew Cross, Steven Gross, Santo J. Pittsman, H. Stephen Burdette,  
Kevin T. Shea, Patricia A. Gray, Roberta Boykin, Debra P. Hilson, Curtis M. Hughes, Vito  
Panzella, James Pascucci, and Mark Witsaman (collectively, the "Restricted Parties"). The facts  
and circumstances supporting this Motion and further grounds therefor are set forth in the  
Declaration of Joseph A. Bondi, Chairman-Restructuring of the Debtors, and the Memorandum  
of Law filed herewith. In further support of this Motion, the Debtors allege as follows:

## **JURISDICTION AND VENUE**

1. On January 30, 1997, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Code"). The Debtors have remained in possession of their respective properties and have continued to operate and manage their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Code. The Court has jurisdiction over this adversary proceeding as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

2. In October 1996, the Debtors filed a written report with the FCC disclosing that serious misrepresentations had been made by the Debtors on almost 400 license applications filed with the FCC. Since that date and as described below, the Debtors have been under intense scrutiny by the FCC, and their basic qualifications to remain an FCC licensee have been placed at issue. The FCC designated these issues for a formal hearing, which was to commence before an administrative law judge ("ALJ") on June 10, 1997. The Debtors sought to have these hearings stayed.

3. On June 6, 1997, the FCC conditionally granted the Debtors' request for a stay (hereinafter, the "June 6 Order"). The June 6 order is attached to the Declaration of Joseph A. Bondi filed herewith as Exhibit B. The stay granted by the FCC in the June 6 Order is expressly "conditioned on there being no transfers or sales of MobileMedia stock owned by MobileMedia's officers and directors during the pendency of the stay." The June 6 Order also seems to include the Debtors' senior managers in this restriction, stating that, in presenting a bankruptcy plan to the FCC for approval, the Debtors must be able to demonstrate that "current

officers, directors and senior managers have not benefitted from sale of their stock" between June 6, 1997 and the consummation of a plan of reorganization.

### **RELIEF REQUESTED**

4. The Debtors are seeking an order from this Court to ensure that the condition to the FCC's stay is met. The FCC made clear in the June 6 Order that precluding the transfer or sale of MobileMedia stock by the Restricted Parties is a condition both to the stay itself and to the Commission's ultimate approval of the transfer of the Debtors' licenses as part of a plan of reorganization. As set forth in the Bondi Declaration and in the "Emergency Motion for Special Relief and Stay of Proceeding Regarding MobileMedia Corporation" previously filed with the FCC and attached to the Bondi Declaration as Exhibit A, the stay is critical to the Debtors' ability to operate. Specifically, the stay is critical to the Debtors' ability to retain and attract customers and employees for the benefit of their estates pending the proposal of a plan of reorganization that will ultimately satisfy the requirements of Second Thursday. In this regard, compliance with the June 6 Order is even more critical. The Debtors' licenses to operate are the most valuable asset of the estate. The FCC has made clear that no license transfer, and therefore no plan of reorganization, will be approved if the Restricted Parties have engaged in and benefitted from interim stock transfers. Simply put, if the Debtors cannot propose a plan that meets this FCC condition, they cannot reorganize. The relief sought herein is essential to ensure strict compliance with the FCC's conditions to the stay and, ultimately, to the Debtors' ability to transfer their licenses and reorganize, as provided for in the June 6 Order.

5. As set forth in the memorandum of law filed herewith, Section 362 of the Code provides that a bankruptcy petition operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the

estate." 11 U.S.C. § 362(a) (3). Because the Debtors' FCC licenses are property of the estate, section 362 automatically stays and enjoins the Restricted Parties from trading the stock of MobileMedia since any trading by the Restricted Parties in the stock of MobileMedia could not only cause the resumption of the FCC hearings, which would harm the Debtors' property and business and diminish the value of the Debtors' estates, but could also jeopardize the Debtors' right to hold, as well as their ability to transfer, their FCC licenses.

6. Moreover, section 105(a) of the Code confers broad equitable powers upon this Court to supervise the reorganization process and to effectuate the provisions of chapter 11. Also as set forth in the attached memorandum, this Court has the power under section 105(a) to enjoin actions that interfere with or impede the Debtors' rehabilitative process and reorganization.

7. The FCC has agreed to stay its regulatory proceedings in order to allow the Debtors to pursue and consummate a bankruptcy solution with their creditors before this Court. However, that stay, and the Debtors' ability to emerge from bankruptcy, is expressly conditioned on the Debtors' ability to demonstrate to the FCC that the Restricted Parties did not sell or transfer their MobileMedia stock between June 6, 1997 and the date that the transfer of licenses embodied in a plan of reorganization is presented to the FCC. An order of this Court is essential to the Debtors' ability to make this showing. As detailed in the Bondi Declaration, if the Debtors are unable to satisfy the FCC's conditions, the harm to the estates will be significant and irreparable.

8. Furthermore, as described in the Bondi Declaration, the Restricted Parties will suffer little, if any, harm from the relief sought from this Court. Moreover, all of the Restricted Parties are fiduciaries of MobileMedia. Because trading in the stock of MobileMedia

for personal gain would cause severe harm to the Debtors, it is unlikely that any of the Restricted Parties would do so even absent an order of this Court.

9. The Debtors are actively pursuing reorganization efforts. Failure to grant the requested relief will significantly impede the Debtors' ability to file and confirm a plan of reorganization.

WHEREFORE, the Debtors pray for judgment, pursuant to 11 U.S.C. §§ 362(a)(3) and 105(a), prohibiting the Restricted Parties from selling or otherwise transferring their shares of MobileMedia stock until further order of this Court, and granting the Debtors such other and further relief as is just and proper.

Dated:       Wilmington, Delaware  
              June 23, 1997

YOUNG, CONAWAY, STARGATT & TAYLOR  
James L. Patton, Jr. (No. 2202)  
Joel A. Waite (No. 2925)  
11th Floor - Rodney Square North  
P.O. Box 391  
Wilmington, Delaware 19899  
(302) 571-6600

SIDLEY & AUSTIN  
J. Ronald Trost  
Shelley C. Chapman  
Lee M. Stein  
Marshall S. Huebner  
875 Third Avenue  
New York, New York 10022  
(212) 906-2000

LATHAM & WATKINS  
Samuel A. Fishman  
John B. Duer  
885 Third Avenue  
New York, New York 10022  
(212) 906-1200

Attorneys for Debtors and  
Debtors-in-Possession

By: Victoria Watson Crunkham  
One of their attorneys

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
MobileMedia Communications,	)	Case No. 97-174
Inc., <u>et al.</u> ,	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
AN ORDER RESTRICTING CERTAIN TRADING IN  
THE STOCK OF MOBILEMEDIA CORPORATION**

**PRELIMINARY STATEMENT**

MobileMedia Corporation, a Delaware corporation ("MobileMedia"), MobileMedia Communications, Inc., a Delaware corporation ("Communications"), and the subsidiaries of Communications, each a debtor and debtor-in-possession herein (collectively, the "Debtors"), submit this memorandum of law in support of their motion for an order restricting certain trading in the stock of MobileMedia. The relief sought herein is supported by sections 362 and 105(a) of title 11 of the United States Code (the "Bankruptcy Code").

The Debtors operate the second largest paging company in the United States pursuant to licenses granted by the Federal Communications Commission. In October 1996, the Debtors filed a written report with the FCC disclosing that serious misrepresentations had been made by the Debtors on almost 400 FCC license applications. Since that date and as described below, the Debtors have been under intense scrutiny by the FCC, and their basic qualifications to



remain an FCC licensee have been placed at issue. The FCC designated these issues for a formal hearing, which was to commence before an administrative law judge ("ALJ") on June 10, 1997.

Pursuant to an Emergency Motion filed on April 23, 1997 (attached to the Declaration of Joseph A. Bondi filed herewith (the "Bondi Declaration") as Exhibit A), the Debtors requested a stay of the hearing, arguing that proceeding with the hearing would inflict irreparable harm on the Debtors and that any plan of reorganization proposed by the Debtors would largely moot the issues that were to be the subject of the hearing. As discussed below, the Debtors believe that the hearings will be mooted by a doctrine known as "Second Thursday," which permits the transfer of FCC licenses if certain conditions are met.

On June 6, 1997, the FCC conditionally granted the Debtors' request for a stay (hereinafter, the "June 6 Order").<sup>1</sup> The stay granted by the FCC in the June 6 Order is expressly "conditioned on there being no transfers or sales of MobileMedia stock owned by MobileMedia's officers and directors during the pendency of the stay." The June 6 Order also seems to include the Debtors' senior managers in this restriction, stating that, in presenting a bankruptcy plan to the FCC for approval, the Debtors must be able to demonstrate that "current officers, directors and senior managers have not benefitted from sale of their stock" between June 6, 1997 and the consummation of a plan of reorganization.

The Debtors are seeking an order from this Court to ensure that the condition to the FCC's stay -- which is also a condition precedent to the ultimate approval by the FCC of the transfer of the Debtors' licenses pursuant to a plan of reorganization -- is met. The Debtors cannot themselves order private individuals not to sell MobileMedia stock. The stay granted by

---

<sup>1</sup> The June 6 Order is attached to the Bondi Declaration as Exhibit B.

the FCC is, however, critical to preserving the Debtors' business operations for the benefit of their creditors, equity security holders, and other parties in interest. Moreover, the FCC made clear in its order that it will not approve the transfer of the Debtors' licenses if there has been benefit from intermediate trading by the Debtors' officers, directors and senior managers (collectively, and as described in the Motion, the "Restricted Parties"). Thus, an order of this Court is also necessary to ensure the Debtors' ability to confirm a plan of reorganization.

Finally, granting the Debtors the relief requested will not cause substantial harm to the Restricted Parties. As the FCC noted, MobileMedia stock, which traded as high as \$27 a share in late 1995, is now worth less than 50 cents a share and has been delisted with NASDAQ. June 6 Order at p. 6. Moreover, as described in a letter from the Debtors' FCC counsel to the FCC dated June 3, 1997 (attached to the Bondi Declaration as Exhibit C), many of the Restricted Parties already face conditions that make it extremely difficult, if not impossible, for them to sell their stock. Finally, all of the Restricted Parties are fiduciaries of MobileMedia. Because trading in the stock of MobileMedia for personal gain would cause severe harm to the Debtors, it is unlikely that any of the Restricted Parties would do so even absent an order of this Court.

### **ARGUMENT**

This Court has the authority to declare that the automatic stay provisions of section 362 of the Bankruptcy Code bar the Restricted Parties from selling or transferring their MobileMedia stock. In the alternative, this Court has the power to prohibit stock trading by the Restricted Parties pursuant to its equitable powers under section 105(a) of the Bankruptcy Code.

The Court should exercise that power in aid of and to ensure compliance with the FCC's June 6 Order.

**I. SECTION 362(a)(3) OF THE BANKRUPTCY CODE SUPPORTS  
THE RELIEF REQUESTED**

---

Section 362 of the Bankruptcy Code provides that, subject to certain exceptions not relevant here, the filing of a bankruptcy petition operates as a stay, applicable to all entities, of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Because the Debtors' FCC licenses are property of the estate under section 541 of the Bankruptcy Code,<sup>2</sup> section 362 prohibits certain conduct that would jeopardize the value of these assets.

The June 6 Order makes clear that the FCC's approval of the transfer of the Debtors' licenses under a plan of reorganization will be withheld unless the Debtors can demonstrate that the Restricted Parties did not benefit from selling MobileMedia stock

---

<sup>2</sup> See, e.g., Ramsay v. Dowden (In re Central Arkansas Broadcasting Co., Inc.), 68 F.3d 213, 215 (8th Cir. 1995); In re Tak Communications, Inc., 985 F.2d 916, 918 (7th Cir. 1993); In re Ridgely Communications, Inc., 139 B.R. 374, 377-78 (Bankr. D. Md. 1992).

subsequent to June 6, 1997.<sup>3</sup> Thus, any sale of MobileMedia stock by a Restricted Party would jeopardize the Debtors' most valuable assets and their ability to reorganize.

In closely analogous situations, in which the sale of a debtor's stock or the trading of claims by third parties threatened the value of a debtor's net operating loss carryforwards ("NOLs"), numerous courts, including this Court, have moved to prohibit, or to declare prohibited, trading or other action by third parties. The instant case, in which the parties to be restricted are limited in number and are both insiders and fiduciaries of the Debtors, presents an even more compelling case for the requested relief.

The leading published decision on point is In re Prudential Lines, Inc., 928 F.2d 565 (2d Cir.), cert. denied, 502 U.S. 821 (1991). In that case, the debtor ("PLI"), a wholly-owned subsidiary of PSS Steamship Company ("PSS"), sought an injunction barring PSS from claiming a "worthless stock deduction" for its stock in PLI because the "claiming of such a deduction . . . would, under the tax laws, destroy the Debtor's \$74 million net operating loss ('NOL') carryovers." In re Prudential Lines, Inc., 107 B.R. 832, 833 (Bankr. S.D.N.Y. 1989). PLI argued, among other things, that (i) the NOL was property of the estate within the meaning of Bankruptcy Code section 541 and (ii) PSS's claiming of the worthless stock deduction would

---

<sup>3</sup> In the June 6 Order, the Commission stated that it:

will scrutinize MobileMedia's Second Thursday showing with extreme care to ensure full compliance with the Second Thursday showing with respect to all potential wrongdoers, that is, all former and current officers, directors, and senior managers. In this regard, MobileMedia's Second Thursday request shall demonstrate with specificity its compliance with the standard with respect to all such persons. This shall include a showing that its current officers, directors, and senior managers have not benefitted from sale of their stock in the interim.

June 6 Order at p.7.

eliminate the NOL in violation of the automatic stay provisions of Bankruptcy Code section 362(a)(3).

The Second Circuit agreed with the debtor. It ruled that PSS' desire to take a worthless stock tax deduction, while ordinarily permissible, was barred because it would violate section 362(a)(3) by interfering with property of the debtor's estate, i.e., its NOL:

[W]here a non-debtor's action with respect to an interest that is intertwined with that of a bankrupt debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such action is barred by the automatic stay.

In the instant case, PSS' interest in its worthless stock deduction is intertwined with PLI's NOL. If PSS were permitted to take a worthless stock deduction on its 1988 tax return, it would have an adverse impact on PLI's ability to carryforward its NOL. Accordingly, despite the fact that PSS' action is not directed specifically at PLI, it is barred by the automatic stay as an attempt to exercise control over property of the estate.

928 F.2d at 574 (citations omitted).

In re Phar-Mor, Inc., 152 B.R. 924 (Bankr. N.D. Ohio 1993), also provides strong support for the relief sought by the Debtors. Concerned that equity trading might result in an ownership change that would jeopardize its NOLs, the debtor in Phar-Mor moved under section 362 to prohibit all sales of its stock. The Phar-Mor court granted the debtors' motion even though the debtors had not shown that any sale was pending that would trigger an ownership change, noting that "[w]hat is certain is that the NOL has a potential value, as yet undetermined, which will be of benefit to creditors and will assist Debtors in their reorganization process. This asset is entitled to protection while Debtors move forward toward reorganization." 152 B.R. at 927. The court therefore ruled that section 362(a)(3) prohibited all sales of the debtors' stock by any party.

This Court reached a similar result in In re LifeCo Investment Group, Inc., Case No. 94-547-PJW (Bankr. D. Del. 1994), in which it prohibited, as a violation of the automatic stay, any transaction by a 5% or more security holder that would jeopardize the debtor's ability to use a \$100 million NOL. See also In re Cumberland Farms, Inc., 162 B.R. 62 (Bankr. D. Mass. 1993) (noting that action by creditor that would terminate contingent tax benefit to debtor was barred under section 362(a)(3)).

In the instant case, the relief sought by the Debtors is more circumscribed than that granted in the cases cited above, since only a limited number of parties are the subject of the Motion. Moreover, as discussed above and detailed in Exhibit C to the Bondi Declaration, many if not all of the Restricted Parties already face severe constraints on their ability to sell MobileMedia stock (which itself has limited value), and any such sale would likely be a breach of a Restricted Party's fiduciary duties. Based on the foregoing, and the critical value of the estate property at issue, section 362(a)(3) clearly supports the relief requested.

**II. IN THE ALTERNATIVE, SECTION 105(a) OF THE BANKRUPTCY CODE SUPPORTS THE RELIEF REQUESTED BECAUSE THE TRANSFER OF MOBILEMEDIA STOCK BY THE RESTRICTED PARTIES WOULD INTERFERE SUBSTANTIALLY WITH THE DEBTORS' ABILITY TO REORGANIZE**

---

Section 105(a) of the Bankruptcy Code provides an independent, alternative basis for the relief requested by the Debtors. This Court's authority under section 105(a) is "broader than the automatic stay provisions of section 362 and [the Court] may use its equitable powers to assure the orderly conduct of the reorganization proceedings." LTV Steel Co. Inc. v. Board of Educ. (In re Chateaugay Corp.), 93 B.R. 26, 29 (S.D.N.Y. 1988) (quoting Erti v. Paine Webber

Jackson & Curtis, Inc. (In re Baldwin-United Corp. Litig.), 765 F.2d 343, 348 (2d Cir. 1985)).

In exercising this authority, numerous courts have held that where the action to be enjoined under section 105 is one that threatens the reorganization process, "the moving party need not demonstrate the more rigorous standards for a preliminary injunction under Fed. R. Civ. P. Rule 65 such as irreparable harm." Johns-Manville Corp. v. Colorado Ins. Guaranty Corp. (In re Johns-Manville Corp.), 91 B.R. 225, 227-28 (Bankr. S.D.N.Y. 1988) (citations omitted). "Since injunctions in bankruptcy cases are authorized by statute, the usual equitable grounds for relief, such as irreparable damage, need not be shown." Garrity v. Leffler (In re Neuman), 71 B.R. 567, 571 (S.D.N.Y. 1987); accord In re Chateaugay Corp., 93 B.R. at 29 (S.D.N.Y. 1988); In re AP Industrial, Inc., 117 B.R. 789, 802 (Bankr. S.D.N.Y. 1990).

Bankruptcy courts may issue injunctions under section 105 "[w]here there is a showing that the action sought to be enjoined would embarrass, burden, delay or otherwise impede the reorganization proceedings or if the stay is necessary to preserve or protect the debtor's estate and reorganization prospects." Alert Holdings, Inc. v. Interstate Protective Services, Inc. (In re Alert Holdings, Inc.), 148 B.R. 194, 200 (Bankr. S.D.N.Y. 1992) (debtors granted preliminary injunctive relief to prevent competitors, inter alia, from diverting accounts which the competitors had previously sold to the debtors), see also 2 Lawrence P. King, Collier on Bankruptcy § 362.05, at 362-47 to 362-48 (15th ed. 1995) (stating that the bankruptcy court has ample power to enjoin actions excepted from the automatic stay that might interfere in rehabilitative process). For the reasons stated above, sales of MobileMedia stock by the Restricted Parties threaten to greatly burden, delay, and impede the Debtors' reorganization

effort as well as diminish the Debtors' estates. The Debtors are therefore entitled to the relief sought herein.

Moreover, courts have specifically exercised their authority pursuant to section 105(a) to stay trading or other action by third-parties where such behavior would have interfered with, hindered, or diminished the debtor's ability to formulate a plan of reorganization. In Prudential Lines, for example, in addition to ruling under section 362, the Second Circuit found that the injunction issued by the courts below was amply supported under section 105(a):

The permanent injunction entered by the bankruptcy court also is supported by its equitable powers pursuant to § 105(a) . . . [which] has been construed liberally to enjoin [actions] that might impede the reorganization process.

In light of the testimony of the parties that the \$74 million NOL was a valuable asset of PLI, we will not disturb the bankruptcy court's finding that elimination of the right to apply its NOL to offset income on future tax returns would impede PLI's reorganization.

928 F.2d at 574 (citations omitted); see also MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 93 (2d Cir.), cert. denied, 488 U.S. 868 (1988) (bankruptcy court has authority to permanently enjoin actions by third parties that would adversely affect property of the estate and interfere with reorganization). The instant case, in which the potential third party action -- selling MobileMedia stock -- would cause severe harm to the Debtors' business and its prospects for reorganization, falls squarely within the well-developed ambit of section 105.



### CONCLUSION

For all the foregoing reasons, this Court should prohibit the Restricted Parties from selling or transferring stock of MobileMedia Corporation until further order of this Court.

Dated: Wilmington, Delaware  
June 23, 1997

YOUNG, CONAWAY, STARGATT & TAYLOR  
James L. Patton, Jr. (No. 2202)  
Joel A. Waite (No. 2925)  
11th Floor - Rodney Square North  
P.O. Box 391  
Wilmington, Delaware 19899  
(302) 571-6684

SIDLEY & AUSTIN  
J. Ronald Trost  
Shelley C. Chapman  
Lee M. Stein  
Marshall S. Huebner  
875 Third Avenue  
New York, New York 10022  
(212) 906-2000

LATHAM & WATKINS  
Michael Chertoff  
One Newark Center  
Newark, New Jersey 07101  
(201) 639-1234

Attorneys for Debtors and  
Debtors-in-Possession

By: Victoria Watson Guriksen  
One of their attorneys